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Great Scott Broadcasting
224 Maugers Mill Road
Pottstown, PA 19464

JUN - 4 2010

Re: WZBH(FM), Georgetown, DE
Facility Id#: 25003
File No. BMPH-20070511ACZ

Dear Applicant:

This is in reference to the above-captioned minor modification application proposing an upgrade from Channel 228B1 to Channel 228B for WZBH(FM). WZBH(FM) is licensed to Great Scott Broadcasting ("GSB"). The application requests a waiver of 47 CFR § 73.215 with respect to WSTW(FM), Wilmington, Delaware. For the reasons stated below, we deny the waiver and dismiss the application.

Background

The instant application proposes to upgrade WZBH(FM) to a Class B at the existing licensed site and increase the antenna height by two meters.¹ At the licensed site, a Class B allotment is not fully-spaced under 47 C.F.R. § 73.207. The proposed Class B, under 47 C.F.R. § 73.207, is short to WEZW(FM), Wildwood, New Jersey, WMMR(FM), Philadelphia, Pennsylvania and WSTW(FM), Wilmington, Delaware. The proposed application site meets the minimum distance separation requirements of 47 C.F.R. § 73.215(e). The application requests processing under the contour protection rule § 73.215 toward WEZW(FM), WMMR(FM) and WSTW(FM). However, the proposal would receive contour overlap in violation of § 73.215(a) with respect to WSTW(FM). This deficiency is recognized in the application and a waiver of § 73.215(a) is requested.

Waiver Request

Under § 73.215, the proposed 54 dBu protected contour would receive prohibited contour overlap from the 48 dBu interfering contour of WSTW(FM).² In support of the request for waiver, the application states that:

The current WZBH(FM) authorization results in a loss of existing service when the station's class is changed from B1 to B. This instant proposal requests a modification of the current authorized directional antenna pattern whereby existing service is retained and does not result in

¹ The licensed coordinate are 38° 31' 24"N.L. and 75 ° 17' 55"W.L. The licensed non-directional antenna radiation height is 146 meters above ground and 158 meters above mean sea level.

² WSTW(FM) is considered to be operating at maximum Class B facilities (i.e., 50 kW ERP at 150 m HAAT) as required by § 73.215(a)(2)(ii).

prohibitive contour overlap to other station as per Section 73.215 of the Commission's Rules. The proposed WZBH operation will not change the location of the licensed 57 dBu contour to the north, in the direction of short-spaced station WSTW(FM). As a matter of fact, the proposed 54 dBu (F50,10) contour will extend to a slightly lesser distance to the north to avoid causing contour overlap with the 54 dBu (F50, 50) contour of WSTW(FM).

The engineering statement concludes that the waiver would be in the public interest because the increased area would serve an additional 17,343 people within an area of 312 square kilometers.

Discussion

Change in protected contours. GSB is correct in that the prohibited contour overlap created by its proposal for WZBH(FM) is the result of the change in the value of the protected contour from 57 dBu for a Class B1 station to 54 dBu for a Class B station. However, this fact does not justify waiver of the rule, as will be explained.

In 1962, station classes and the corresponding maximum facilities were originally selected to serve a specified service radius, not a particular service contour. When Class B stations were established, it was recognized that this class of station would provide a weaker field strength at their protected service contours when compared to other classes of FM stations. This difference was necessary to allow Class B and B1 stations to provide adequate service to larger urban areas generally found in Zones I and I-A. With this in mind, the Commission adopted spacing rules (and later contour protection rules) designed to prevent interference within the weaker signal strength at the protected service contour. In this regard, Class B1 and B stations are administratively different than the remaining classes of commercial FM stations.³

The application would not provide protection from interference out to WZBH(FM)'s proposed Class B protected contour. If the application were granted as proposed, it would create a new area of prohibited contour overlap and interference, as GSB has recognized. Thus, WZBH(FM)'s actual Class B protected service would be diminished from that which would normally be expected of a Class B station without contour overlap. To prevent this situation from occurring, the creation of new prohibited contour overlap is specifically prohibited by § 73.215. Consequently, GSB has requested waiver of § 73.215.

GSB references Paragraph 54 of the Memorandum Opinion and Order in Docket 87-121, 6 FCC Rcd 5356 (1991), in support of its waiver request. Paragraph 54 addresses those stations which were governed solely by the § 73.207 spacing rules prior to the 1989 effective date of the contour protection rule (§ 73.215), but which would have existing contour overlap under § 73.215 standards. Paragraph 54 permits those stations to maintain, but not increase, any existing contour overlap, to ensure that existing service not be lost. This policy also serves to prevent any existing interference in the FM band from becoming worse.

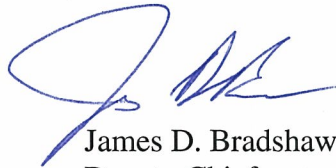
Paragraph 54 does not apply to an applicant seeking to increase or create new interference, as defined by § 73.215. Therefore, this policy can not be applied to WZBH(FM), since no prohibited contour overlap presently occurs between WZBH(FM)'s 57 dBu protected contour and the 51 dBu interfering

³ See First Report and Order in MM Docket 14185, 23 RR 1801 (1962) at 1825; Report and Order in MM Docket 80-90, 94 FCC 2d 152 (1983) at Paragraph 87; Report and Order in Docket 87-121, 4 FCC Rcd 1681 (1989) at Paragraphs 43-45.

contour of WSTW(FM). GSB bases its waiver request on maintaining existing service, the rationale being that the location of the 54 dBu coverage contour will not change. Therefore, GSB claims that the proposal will continue to provide service to persons currently served. However, this fact alone does not justify waiver of the rule because, as a Class B station, WZBH(FM)'s service obligation is greater in that interference free service must be provided within the 54 dBu contour not simply within the 57 dBu contour as for a Class B1 station. If WZBH(FM) wishes to upgrade to a Class B facility, it must do so in a manner consistent with the Commission's rules as they pertain to B stations.

When an applicant seeks waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action. *Columbia Communications Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir. 1987) (quoting *Rio Grand Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 644 (D.C.Cir.1968) (per curiam)). We have afforded the request for waiver of § 73.215(b)(2)(ii) the "hard look" called for under the *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), but find that the facts and circumstances presented in the applicants' justifications are insufficient to establish that grant of the requested waiver would be in the public interest. Accordingly, the request for waiver of 47 CFR § 73.215(b)(2)(ii) made by GSB IS HEREBY DENIED. In addition, pursuant to Paragraph 22 of the *Report and Order* in MM Docket 91-347, 7 FCC Rcd 5074 (1992), since the application requested waiver of a rule but the waiver was denied, this application may not be amended to rectify the deficiencies. Therefore, application BMPH-20070511ACZ IS HEREBY DISMISSED as unacceptable for filing.

Sincerely,



James D. Bradshaw
Deputy Chief
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Media Bureau

CC: Dennis Corbett